

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JULY 14, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 485

Introduced by Assembly Member Carter

February 24, 2009

An act to add Part 5 (commencing with Section 1500) to Division 2 of the Labor Code, relating to the Civil Air Patrol.

LEGISLATIVE COUNSEL'S DIGEST

AB 485, as amended, Carter. Civil Air Patrol: California Wing: employment leave.

Existing federal law establishes the Civil Air Patrol as the civilian auxiliary of the United States Air Force. Existing state and federal law establish leave provisions for members of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States, and the National Guard.

This bill would require employers employing more than 15 employees to provide not less than 10 days per year of leave, beyond any leave benefits otherwise available to employees, to employees who have been employed by that employer for at least 90 days immediately preceding the commencement of leave, who are volunteer members of the California Wing of the Civil Air Patrol, and who have been duly directed and authorized by a political entity that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission of the California Wing of the Civil Air Patrol. The employee would be required

to give the employer as much notice as possible of the intended dates upon which the leave would begin and end. The bill would require an employer, upon expiration of the Civil Air Patrol leave taken by an employee, to restore the employee to the position he or she held when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment, unless the employee is not restored because of conditions unrelated to the exercise of the leave rights by the employee. The bill would ~~exempt from the~~ *provide that an employer is not required to grant Civil Air Patrol leave to Civil Air Patrol leave* employees who are required to respond as first responders *or disaster service workers for a local, state, or federal agency to the same or a simultaneous* emergency operational mission.

The bill would authorize an employee to bring a civil action in the superior court of the appropriate county to enforce the Civil Air Patrol leave rights. The court would be authorized to enjoin any act or practice that violates the Civil Air Patrol leave provisions and to order any equitable relief necessary and appropriate to redress the violation or to enforce the Civil Air Patrol leave rights.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 5 (commencing with Section 1500) is added
2 to Division 2 of the Labor Code, to read:

3
4 PART 5. CIVIL AIR PATROL

5
6 1500. This part shall be known and may be cited as the Civil
7 Air Patrol Employment Protection Act.

8 1501. In this part, the following terms have the following
9 meanings:

10 (a) "Civil Air Patrol leave" means leave requested by an
11 employee who is a volunteer member of the California Wing of
12 the civilian auxiliary of the United States Air Force commonly
13 known as the Civil Air Patrol and who has been duly directed and
14 authorized by the United States Air Force, the California
15 Emergency Management Agency, or other political subdivision
16 of the State of California that has the authority to authorize an

1 emergency operational mission of the California Wing of the Civil
2 Air Patrol, to respond to an emergency operational mission, within
3 or outside of the state, of the California Wing of the Civil Air
4 Patrol.

5 (b) "Employee" means a person who may be permitted, required,
6 or directed by an employer for wages or pay to engage in any
7 employment and who has been employed by that employer for at
8 least a 90-day period immediately preceding the commencement
9 of leave, if otherwise eligible for leave.

10 (c) "Employee benefits" means all benefits, other than salary
11 and wages, provided or made available to an employee by an
12 employer and includes group life insurance, health insurance,
13 disability insurance, and pensions, regardless of whether benefits
14 are provided by a policy or practice of an employer.

15 (d) "Employer" means any person, partnership, corporation,
16 association, or other business entity; or the State of California, a
17 municipality, or other unit of local government; that employs more
18 than 15 employees.

19 1502. An employer shall not discriminate against or discharge
20 from employment a member of the Civil Air Patrol because of
21 such membership and shall not hinder or prevent a member from
22 performing service as part of the California Wing of the Civil Air
23 Patrol during an emergency operational mission of the California
24 Wing of the Civil Air Patrol for which a member is entitled to
25 leave under this part.

26 1503. (a) (1) An employer shall provide not less than 10 days
27 per calendar year of unpaid Civil Air Patrol leave to an employee
28 responding to an emergency operational mission of the California
29 Wing of the Civil Air Patrol. Civil Air Patrol leave for a single
30 emergency operational mission shall not exceed three days, unless
31 an extension of time is granted by the governmental entity that
32 authorized the emergency operational mission, and the extension
33 of the leave is approved by the employer.

34 (2) Notwithstanding paragraph (1), an employer ~~shall not~~ *is not*
35 *required to* grant Civil Air Patrol leave to an employee who is
36 *required to respond to the either the same or other simultaneous*
37 *emergency operational mission as a first responder or disaster*
38 *service worker* for a local, state, or federal agency.

1 (b) (1) An employee shall give the employer as much notice
2 as possible of the intended dates upon which the Civil Air Patrol
3 leave will begin and end.

4 (2) An employer may require certification from the proper Civil
5 Air Patrol authority to verify the eligibility of the employee for
6 the leave requested or taken. The employer may deny the leave to
7 be taken as Civil Air Patrol leave if the employee fails to provide
8 the required certification.

9 (c) An employee taking leave under this part shall not be
10 required to exhaust all accrued vacation leave, personal leave,
11 compensatory leave, sick leave, disability leave, and any other
12 leave that may be available to the employee in order to take Civil
13 Air Patrol leave.

14 (d) Nothing in this act prevents an employer from providing
15 paid leave for leave taken pursuant to this part.

16 1504. (a) An employer shall, upon expiration of a leave
17 authorized by this part, restore an employee to the position held
18 by him or her when the leave began or to a position with equivalent
19 seniority status, employee benefits, pay, and other terms and
20 conditions of employment. An employer may decline to restore
21 an employee as required in this subdivision because of conditions
22 unrelated to the exercise of rights under this part by the employee.

23 (b) An employer and an employee may negotiate for the
24 employer to maintain the benefits of the employee at the expense
25 of the employer during the leave.

26 1505. (a) Taking Civil Air Patrol leave under this part shall
27 not result in the loss of an employee benefit accrued before the
28 date on which the leave began.

29 (b) This part does not affect the obligation of an employer to
30 comply with any collective bargaining agreement or employee
31 benefit plan that provides greater leave rights to employees than
32 the rights provided under this part.

33 (c) The rights provided under this part shall not be diminished
34 by any collective bargaining agreement or employee benefit plan
35 entered into on or after January 1, 2010.

36 (d) This part does not affect or diminish the contract rights or
37 seniority status of an employee not entitled to Civil Air Patrol
38 leave.

1 1506. (a) An employer shall not interfere with, restrain, or
2 deny the exercise or the attempt to exercise a right established by
3 this part.

4 (b) An employer shall not discharge, fine, suspend, expel,
5 discipline, or in any other manner discriminate against an employee
6 who does any of the following:

7 (1) Exercises a right provided under this part.

8 (2) Opposes a practice made unlawful by this part.

9 1507. (a) An employee may bring a civil action in the superior
10 court of the appropriate county to enforce this part.

11 (b) The court may enjoin any act or practice that violates this
12 part and may order any equitable relief necessary and appropriate
13 to redress the violation or to enforce this part.